

UNITED STATES DISTRICT COURT
THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIAM JAMES NEWCOMB,

Case No.
Hon.

Plaintiff,

vs

ROBERT ANTHONY MCGUIRE,
UNITED STATES OF AMERICA,
UNITED STATES POSTAL SERVICE,

Defendants.

S. WESLEY COMPTON P75103
DANIEL V. PADILLA P48634
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COMPLAINT

There was a civil action between other parties arising out of the same transaction or occurrence as alleged in the complaint. The action was filed in the Macomb County Circuit Court, Judge Jennifer M. Faunce, Case No. 20-001999-NF. The case is no longer pending.

/s/ S. Wesley Compton
S. WESLEY COMPTON P75103

NOW COMES the Plaintiff, WILLIAM NEWCOMB, by and through his attorneys, **PADILLA LAW GROUP**, and in support of his Complaint against the Defendants, shows unto this Honorable Court as follows:

JURISDICTION AND VENUE

1. That Plaintiff, WILLIAM NEWCOMB, is a resident of the City of Eastpointe, County of Macomb, State of Michigan.

2. That based upon information and belief, Defendant, ROBERT ANTHONY MCGUIRE, is a resident of the City of Chesterfield, Macomb County, Michigan, and is an employee of the United States Postal Service.

3. Upon information and belief, Defendant, UNITED STATES OF AMERICA, is the owner of the subject vehicle.

4. Upon information and belief, Defendant, UNITED STATES POSTAL SERVICE, is the employer of Defendant, ROBERT ANTHONY MCGUIRE, and agency of the U.S. Government.

5. That this case involves a motor vehicle accident which occurred on June 11, 2019, in the City of Roseville, Macomb County, Michigan.

6. Jurisdiction in Federal Court is proper pursuant to 28 USCA 1332(a)(1) based upon diversity of citizenship and the amount in controversy exceeds \$75,000.00, exclusive of interest, costs, and attorney fees.

ALLEGATIONS COMMON TO ALL COUNTS

7. Plaintiff hereby incorporates by reference and re-alleges paragraphs 1 through 6 of this Complaint with the same force and effect as if same were set forth in full.

8. On June 11, 2019, at approximately 11:30 a.m. Plaintiff, WILLIAM NEWCOMB, was a driver 2008 Dodge Dakota of a with a Michigan plate number DRP1076 and was traveling

southbound on Lawn Street near the intersection of Church Street in the City of Roseville, County of Macomb, State of Michigan.

9. On January 30, 2019, at approximately 10:00 a.m. Defendant, ROBERT ANTHONY MCGUIRE, was the driver and Defendant, UNITED STATES OF AMERICA, and/or UNITED STATES POSTAL SERVICE, was the owner/lessee of a 2001 Ford Utilimaster and was attempting to turn left from a private drive onto northbound on Lawn Street near the intersection of Church Street in the City of Roseville, County of Macomb, State of Michigan.

10. A claim was timely presented to the USPS District Accident & Tort Claims via the Standard Form 95 Claim for Damage, Injury, or Death. (*Exhibit 1, letter, claim form and proof of service*)

**COUNTS I AND II– GROSS NEGLIGENCE AND NEGLIGENCE OF DEFENDANT
ROBERT ANTHONY MCGUIRE**

11. Plaintiff hereby incorporates by reference and re-alleges paragraphs 1 through 10 of this Complaint with the same force and effect as if same were set forth in full.

12. Defendant, ROBERT ANTHONY MCGUIRE, was operating the aforesaid vehicle in obvious derogation of his duties and responsibilities as a motor vehicle operator and in disregard of the Michigan Vehicle Code prescribing careless and reckless driving. Defendant, ROBERT ANTHONY MCGUIRE, struck Plaintiff's vehicle with great force causing extensive damage, and the serious injuries to Plaintiff as set forth in detail below; further Defendant's vehicle struck Plaintiff's vehicle with great speed and without notice or warning and Plaintiff was unable to avoid this collision, though she made every effort to do so.

13. Defendant, ROBERT ANTHONY MCGUIRE, owed a duty to Plaintiff and all others using the highway to obey the traffic ordinances of the City of Roseville, and the Motor

Vehicle Code of the State of Michigan, being 1949 P.A. 300 as amended MCLA 257.1 et.seq.; MSA 9.1801 et. seq., to use due care and caution in the operation and control of a motor vehicle as a reasonably prudent person would under the common law of the State of Michigan and to drive with that care and circumspection required to reasonably protect the safety, health, lives and property of all others entitled to use the highways:

14. Defendant, ROBERT ANTHONY MCGUIRE, was negligent and grossly negligent in that he:

- a. disregarded traffic signals, posted signs, and did otherwise fail to observe and obey applicable traffic control devices in the immediate area of the collision, all in violation of MCLA 257.611, MCLA 257.612(c);
- b. failed to drive his vehicle at a careful and prudent speed not greater nor less than was reasonable and proper with due regard to the traffic, surface and width of the roadway and other relevant conditions then and there existing in a manner in which would enable him to stop in the assured safe and clear distance ahead, all in violation of MCLA 257.627;
- c. failed to drive his automobile in a careful and prudent manner in violation of MCLA 257.626(b);
- d. failed to maintain a proper lookout, keep proper observation, to maintain control of his vehicle and otherwise failed to comply with his common law duty to use reasonable and ordinary care under the circumstances then and there existing in the operation of a motor vehicle;
- e. drove his vehicle upon a public highway recklessly, heedlessly in willful and wanton disregard of the rights and safety of persons and property, without caution or circumspection and at a rate of speed and in a manner so as to endanger other persons lawfully upon the highway all in violation of MCLA 257.626(c);
- f. failed to drive the vehicle such that he was able to keep an assured, clear and safe distance ahead and behind him; and
- g. failed to keep the vehicle he was operating under control at all times.

15. Each of the above acts of negligence and gross negligence was a proximate cause of Plaintiff's injuries and a violation of the Federal Tort Claims Act, including but not limited to 28 USCS Sec. 2671-268.

WHEREFORE, Plaintiff, WILLIAM NEWCOMB, prays for a Judgment against Defendant, ROBERT ANTHONY MCGUIRE, of actual and consequential damages in whatever amounts in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00) he is deemed to be entitled by this Honorable Court and/or jury, together with costs, interest and attorney fees.

**COUNTS III AND IV – GROSS NEGLIGENCE AND NEGLIGENCE OF DEFENDANT
UNITED STATES OF AMERICA**

16. Plaintiff hereby incorporates by reference and re-alleges paragraphs 1 through 15 of this Complaint with the same force and effect as if same were set forth in full.

17. Defendant, UNITED STATES OF AMERICA, was on June 11, 2019, the owner of a 2001 Ford Utilimaster and entrusted to Defendant, ROBERT ANTHONY MCGUIRE, for purpose of personal use.

18. Defendant, UNITED STATES OF AMERICA, as owner, negligently entrusted the above motor vehicle and its operation to Defendant, ROBERT ANTHONY MCGUIRE, the latter being a person incompetent, and unfit to drive a motor vehicle on the highway in the State of Michigan, by reason of his inability, inexperience, and consistently negligent, driving, all of which were known in the exercise of reasonable care and caution by the Defendant owner; and the Defendant owner is guilty of negligence and gross negligence independently to this Plaintiff for the negligent entrustment of this vehicle to the Defendant driver.

19. Defendant, UNITED STATES OF AMERICA, breached their duty to entrust their vehicle to persons competent and fit to drive a motor vehicle, to persons with such experience and

consistent driving habits such that the exercise of reasonable care and caution would ordinarily be followed.

20. As a proximate result of the negligent entrustment and breach of these duties by Defendant, UNITED STATES OF AMERICA, Plaintiff has suffered damages as set forth below.

21. Defendant, UNITED STATES OF AMERICA, as owner of the motor vehicle remains liable for any injury occasioned by the negligent and grossly negligent operation of such motor vehicle whether the manner of operating the vehicle was a violation or a failure to observe ordinary care in the operation of a motor vehicle pursuant to MCLA 257.401.

22. Each of the above acts of negligence and gross negligence was a proximate cause of Plaintiff's injuries and a violation of the Federal Tort Claims Act, including but not limited to 28 USCS Sec. 2671-268.

23. Defendant, ROBERT ANTHONY MCGUIRE, was at all times operating and using the motor vehicle with the express and/or implied consent of Defendant, UNITED STATES OF AMERICA.

WHEREFORE, Plaintiff prays for judgment against the Defendant, UNITED STATES OF AMERICA, in an amount in excess of SEVENTY-FIVE THOUSAND (\$75,000.00) DOLLARS to which this Plaintiff is found to be entitled plus costs, interest, and attorney fees.

**COUNTS V AND VI– GROSS NEGLIGENCE AND NEGLIGENCE OF DEFENDANT
UNITED STATES POSTAL SERVICE**

24. Plaintiff hereby incorporates by reference and re-alleges paragraphs 1 through 25 of this Complaint with the same force and effect as if same were set forth in full.

25. Defendant, UNITED STATES POSTAL SERVICE, was on June June 11, 2019, the owner of a 2001 Ford Utilimaster with and entrusted to Defendant, ROBERT ANTHONY MCGUIRE, for purpose of personal use.

26. Defendant, UNITED STATES POSTAL SERVICE, as owner, negligently entrusted the above motor vehicle and its operation to Defendant, ROBERT ANTHONY MCGUIRE, the latter being a person incompetent, and unfit to drive a motor vehicle on the highway in the State of Michigan, by reason of his/her inability, inexperience, and consistently negligent, driving, all of which were known in the exercise of reasonable care and caution by the Defendant owner; and the Defendant owner is guilty of negligence and gross negligence independently to this Plaintiff for the negligent entrustment of this vehicle to the Defendant driver.

27. Defendant, UNITED STATES POSTAL SERVICE, breached his/her duty to entrust his/her vehicle to persons competent and fit to drive a motor vehicle, to persons with such experience and consistent driving habits such that the exercise of reasonable care and caution would ordinarily be followed.

28. As a proximate result of the negligent entrustment and breach of these duties by Defendant, UNITED STATES POSTAL SERVICE, Plaintiff has suffered damages as set forth below.

29. Defendant, UNITED STATES POSTAL SERVICE, as owner of the motor vehicle remains liable for any injury occasioned by the negligent and grossly negligent operation of such motor vehicle whether the manner of operating the vehicle was a violation or a failure to observe ordinary care in the operation of a motor vehicle pursuant to MCLA 257.401.

30. Each of the above acts of negligence and gross negligence was a proximate cause of Plaintiff's injuries and a violation of the Federal Tort Claims Act, including but not limited to 28 USCS Sec. 2671-268.

31. Defendant, ROBERT ANTHONY MCGUIRE, was at all times operating and using the motor vehicle with the express and/or implied consent of Defendant, UNITED STATES POSTAL SERVICE.

WHEREFORE, Plaintiff prays for judgment against the Defendant, UNITED STATES POSTAL SERVICE, in an amount in excess of SEVENTY-FIVE THOUSAND (\$75,000.00) DOLLARS to which this Plaintiff is found to be entitled plus costs, interest, and attorney fees.

DAMAGES OF PLAINTIFF

32. As a proximate result of the aforementioned collision, proximately caused by the gross negligence of the Defendants, ROBERT ANTHONY MCGUIRE, UNITED STATES OF AMERICA, AND UNITED STATES POSTAL SERVICE, the Plaintiff has suffered serious impairment of his body functions and/or serious, permanent disfigurement, to wit: injuries to his head, neck, back, left arm, left shoulder, and left side including radiating numbness in his extremities; including, but not limited to injury to the bone, muscles, nerves, ligaments, and other soft tissue of the spine including dizziness and headaches. Plaintiff has suffered a severe shock to the nervous system, has suffered and will continue to suffer great physical pain, mental anguish, humiliation, embarrassment, anxiety and depression, pain and suffering all past, present and lasting indefinitely into the future. Plaintiff is undergoing extensive physical therapy and have and will continue to suffer a loss of normal activities and pleasures of life endeavoring to be cured of his injuries and disabilities. Plaintiff has expended and will continue to expend into the indefinite

future, large sums of money for medical, rehabilitation and physical therapy. Plaintiff has suffered and will suffer indefinitely into the future loss of wages and loss of earning capacity in excess of the amounts recoverable under the Michigan No-fault Laws.

WHEREFORE, Plaintiff prays for judgment against the Defendants, ROBERT ANTHONY MCGUIRE, UNITED STATES OF AMERICA, AND UNITED STATES POSTAL SERVICE, in an amount in excess of SEVENTY-FIVE THOUSAND (\$75,000.00) DOLLARS to which this Plaintiff is found to be entitled plus costs, interest, and attorney fees.

Respectfully Submitted,

PADILLA LAW GROUP

/s/ S. Wesley Compton
S. WESLEY COMPTON P75103
Attorney for Plaintiff
1821 W. Maple Road
Birmingham, MI 48009
(248) 593-0300

Dated: June 8, 2022

UNITED STATES DISTRICT COURT
THE EASTERN DISTRICT OF MICHIGAN
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WILLIAM JAMES NEWCOMB,

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Hon.

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JURY DEMAND

Plaintiff demands a Trial by jury in this matter.

Respectfully Submitted,

PADILLA LAW GROUP

/s/ S. Wesley Compton

S. WESLEY COMPTON P75103

Attorney for Plaintiff

1821 W. Maple Road

Birmingham, MI 48009

(248) 593-0300

Dated: June 8, 2022